



Nevada State Board of Medical Examiners

* * * MINUTES * * *

OPEN SESSION BOARD MEETING

Held at the Following Locations
and Videoconferenced Between the Two:

Conference Room at the Offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, NV 89502

Conference Room at the Offices of the
Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, MARCH 5, 2010 – 8:00 a.m.

Board Members Present in Reno

Charles N. Held, M.D., President
Theodore B. Berndt, M.D.
Michael J. Fischer, M.D.
Valerie J. Clark, BSN, RHU, LUTCF

Board Members Present in Las Vegas

Benjamin J. Rodriguez, M.D., Vice President
Renee West, Secretary-Treasurer
Javaid Anwar, M.D.
Van V. Heffner

Board Members Absent

Beverly A. Neyland, M.D.

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Staff Present in Reno

Douglas C. Cooper, CMBI, Interim Executive Director
Edward O. Cousineau, J.D., General Counsel
Bradley O. Van Ry, Deputy General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Acting Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Carolyn H. Castleman, Deputy Chief of Licensing
Johnna S. LaRue, Compliance Officer
Shawna M. Rice, Investigator
Donya Jenkins, Finance Manager
Jerry C. Calvanese, M.D., Medical Reviewer

Staff Present in Las Vegas

Lyn E. Beggs, J.D., General Counsel

Also Present in Reno

Keith D. Marcher, J.D., Senior Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum
- Charles N. Held, M.D., President

The meeting was called to order by President Charles N. Held, M.D., at 8:05 a.m.

Mr. Cousineau took roll call, and all Board Members were present with the exception of Beverly Neyland, M.D. Mr. Cousineau announced that there was a quorum.

Dr. Held stated that he had gone to Haiti to offer some medical relief and it is important to note that as terrible as it looks on television, it is actually much worse, in terms of the disaster to the infrastructure, the structures and everyone's lives, and he urged everyone not to forget Haiti, as they are going to need assistance for decades.

Dr. Held welcomed new Board Member Valerie J. Clark, BSN, RHU, LUTCF, and Ms. Clark provided a brief summary of her background and experience in the health care industry and otherwise.

Agenda Item 2

APPROVAL OF MINUTES

- November 6 & 7, 2009 Board Meeting – Open/Closed Sessions

Mr. Heffner moved to approve the Minutes of the November 6 & 7, 2009 Board Meeting – Open/Closed Sessions. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 3

PERSONNEL

- Staffing
- Charles N. Held, M.D., President; Douglas C. Cooper, Interim Executive Director

OPEN SESSION

Mr. Cooper introduced the Board's new Deputy General Counsel, Bradley O. Van Ry, J.D., and Mr. Van Ry provided a brief summary of his background and experience in the legal field.

Mr. Cooper advised the Board that as a result of his move to his present position, Pamela Castagnola was promoted to Interim Chief of Investigations, Heather Higgins was promoted to Deputy Chief of Investigations, and an Investigator had been hired to fill the vacant position in the Investigations Division. The new Investigator will begin work on April 15. Additionally, Edward Cousineau was promoted to the newly-created Deputy Executive Director position that was approved in November, Lyn Beggs is now the sole General Counsel for the Board and Bradley Van Ry was hired as Deputy General Counsel to fill the vacancy in the Legal Division. Mr. Cousineau will retain his caseload, and with this extra support, staff should be caught up with respect to the Board's legal disciplinary cases within six months.

Dr. Fischer moved to go to Closed Session. Dr. Berndt seconded the motion, and it passed.

Upon returning to Open Session, Dr. Held stated that the Board had received input from Mr. Cooper regarding the professional competency of those who had been promoted and he moved that the Board approve the promotions and the attendant adjustments as outlined by Mr. Cooper in Closed Session. Dr. Fischer seconded the motion.

Mr. Marcher advised that the proposed adjustments should be stated on the record.

Mr. Cooper stated the adjustments were the promotion of Pamela Castagnola to Interim Chief of Investigations with a salary increase of \$6,000, the promotion of Heather Higgins to Deputy Chief of Investigations with an increase of \$6,000; the promotion of Edward Cousineau to the position of Deputy Executive Director with a salary increase of \$3,000; and the hiring of Bradley Van Ry as Deputy General Counsel. The changes were all budget-neutral.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 4

CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630

- Consideration of Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.350 and NAC 630.530 to Include Language Which Indicates that Physician Assistant and Practitioner of Respiratory Care Licensees Must Provide Evidence of Required Continuing Medical Education or Continuing Education Units Completion, as a Condition of Licensure Renewal, When Their Licenses Have Previously Been Suspended for Non Payment
- Edward O. Cousineau, J.D., General Counsel; Douglas C. Cooper, CMBI, Interim Executive Director

Mr. Cousineau requested authority to proceed with the regulatory adoption process for amendments to two currently existing regulations, NAC 630.350 and NAC 630.530. The Licensing Division has requested that the Board incorporate language to further clarify that failure to submit either CMEs or CEUs when renewing a license is grounds for automatic suspension of the license until the appropriate requirement is met. The regulations currently state that a license will not be renewed absent completion of the CMEs or CEUs, but these amendments would clarify any potential ambiguity in these regulations with respect to this requirement.

Dr. Anwar moved that the Board authorize Mr. Cousineau to proceed. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 5

CONSIDERATION OF PETITION PURSUANT TO NRS 630.420 THROUGH 630.440 FOR REVISIONS TO NAC 630.230(g) AND NAC 630.040

- Jacob L. Hafter, Esq.

Dr. Held asked Mr. Hafter if he wanted him to recuse himself from discussion of the matter, and Mr. Hafter stated he did not.

Mr. Marcher explained that anyone can file a petition with regard to a regulation, as Mr. Hafter has done. The procedure would be to hear from Mr. Hafter, ask any questions, and at the end of the presentation, the Board can call for public comment if it would like to hear from the public on the issue. The Board can then either send the regulation back through the regulatory process to repeal or amend it, or create a new regulation, or it can dismiss the petition, in which case Mr. Hafter would have available to him the remedy of seeking declaratory relief in District Court.

Mr. Hafter explained that he represents numerous physicians and that this is a global issue. With respect to his first petition, he stated that obesity is becoming one of our country's largest epidemics and for some reason, without any medical science or evidence, the Board has chosen not to allow a particular substance to be used by a physician for the treatment of obesity. He described the composition of HCG, how it is created and how it is used by physicians to treat other medical conditions. There have been numerous studies done on HCG and there has not been one single reported incident of a serious adverse event or patient death from HCG. It is a safe substance and nowhere has it been alleged not to be safe. The controversy arises with respect to whether HCG is an efficacious substance for the purpose of weight loss, because some studies suggest it is and others suggest that compared to other low-calorie diets, it can't be shown to be more efficacious. The difference is that those who use HCG do not lose muscle mass like those who are simply on a starvation diet and don't use HCG. The substance is being used for weight loss throughout the United States. He went on to explain how HCG works to help the body convert bad fat into a fat the body can absorb and transform into calories, so it is not dangerous to ingest only 500 calories a day. Doctors who are using this are finding conclusively that people who lose weight using HCG are not losing muscle mass, their metabolic rates are being altered because they are changing the way their bodies burn fat, and patients are doing well with it. So what he is asking in his first petition is that the Board eliminate HCG from the list of drugs in NAC 630.230(g) that may not be used for the control of weight.

Dr. Held commented that several physicians have contacted him in support of the petition, and noted that the Board had received a letter of support from a local court reporter.

Discussion ensued concerning how the prohibition against using HCG for weight loss became law and whether other states have a similar prohibition. Mr. Cooper stated that the FDA has no direct prohibition against the use of HCG and they leave its off-label use to be regulated as a practice of medicine issue by state medical boards.

Dr. Berndt commented that he had also received several requests from physicians to look into this issue.

Mr. Hafter stated he is aware of a great number of people who have used HCG successfully, and he is one of them.

Discussion ensued regarding whether it would be appropriate to remove HCG from NAC 630.230(g).

Dr. Held asked whether there were any members of the public present who would like to make a public comment.

Weldon Havins, M.D., J.D., advised the Board that the Board of Osteopathic Medicine had met on Tuesday and voted to strike the prohibition against the use of HCG in their regulation.

Mr. Bill Stilling stated he was an attorney in Utah and Nevada, and also a pharmacist, and questioned whether the Medical Board wants, as a matter of policy, to set up a list of drugs that are illegal to prescribe that seem safe and effective to use. He could not see why the Board would want to do so if there is no harm in using them.

Further discussion ensued regarding whether it would be appropriate to remove HCG from NAC 630.230(g).

Dr. Fischer moved that the Board proceed with the regulatory process to remove the prohibition against using HCG for weight control from the regulation. Mr. Heffner seconded the motion, and it passed unanimously.

Dr. Held stated that pursuant to NAC 630.402, Mr. Hafter would need to submit a draft of the proposed regulatory change in the appropriate format.

Dr. Held then asked Mr. Hafter to address his second petition.

Mr. Hafter stated that the second petition followed from a larger look at how the Board does business, which came about as a result of looking into the HCG issue. He stated that pursuant to the Administrative Procedures Act, he had filed a lawsuit in the District Court challenging the legitimacy of both NAC 630.230(g) and NAC 630.040, as a whole, alleging they are unconstitutional. He was told he needed to exhaust his administrative remedies and petition the Board first. He believes this is wrong and the District Court is evaluating that

argument, but in the meantime he decided to go ahead and file the petition with the Board as well. NAC 630.230(g) lists several substances that a physician or physician assistant shall not prescribe for the control of weight. He stated the Board did not have the authority to pass that regulation and went on to explain why he believes this. He said the Board does not have authority to implement regulations that define standards of care. The Board is a licensing board that should deal with competence of physicians and ethics. NAC 630.230(g) is unconstitutional, broad, vague and ambiguous, and the entire thing should be stricken.

Mr. Hafter then stated that similarly, the Board has a vague and overbroad catch-all to discipline physicians using NAC 630.040. Through that, the Board has determined that a physician may be disciplined for malpractice and has interpreted malpractice to be a deviation from a standard of care. Again, the Board does not have authority to define standards of care. The Board has a regulatory structure that allows it to arbitrarily go after a doctor for deviating from a standard of care but has failed to define what those standards are. There is no mandatory obligation to show that what the physician engaged in is harmful to a patient. It is overbroad and exceeds the Board's authority. Moreover, it has been determined under the laws of the state of Nevada and the United States, that when a regulation or statute deals with a constitutionally-protected right, it need not be shown that it is broad in every circumstance, only in most, and the regulation or statute can be stricken. A physician's license to practice medicine is a constitutionally-protected property interest. This has been so held by the Nevada Supreme Court and in federal court. So he is asking that the Board strike NAC 630.040 completely. As it is now, the deviation from the standard of care is broad, vague and ambiguous, and it needs to be stricken.

Dr. Held clarified that no one currently on the Board was on the Board when either regulation was created. He then explained that in cases involving a question of medical malpractice, experts in the field are brought in to give the Board information. If the experts agree that the care rendered by the physician was appropriate, the case is closed, but if the experts opine that the care rendered was inappropriate, the physician then has a right to a hearing before a hearing officer and to bring in whatever experts he or she has to state his or her case. The primary obligation of the Board is to protect the people of the state of Nevada from someone who may not be using reasonable care and skill, and may be omitting or committing acts that are not appropriate. To ask the legislative body to define the standard of care would mean that just about every time a new article is published, the Board would have to go through a two-year process with the Legislature to define the standard of care.

Discussion ensued concerning whether it would be appropriate to strike NAC 630.230(g) and/or NAC 630.040.

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

Further discussion ensued concerning the action that the Board should take with regard to the petition before them.

Dr. Rodriguez moved that the Board proceed with the regulatory process with respect to the second petition but subtract the reference to NAC 630.040. Dr. Held seconded the motion, and it passed unanimously.

Agenda Item 6

CONSIDERATION OF REQUEST OF BARRY MARKMAN, M.D., FOR REMOVAL OF RESTRICTIONS ON HIS MEDICAL LICENSE

- Barry Markman, M.D.

Thomas Shang, M.D., was present with Dr. Markman in support of Dr. Markman's request.

Ms. Daniels explained that Dr. Markman was before the Board to request removal of the restriction currently on his medical license. Dr. Markman had held an inactive-status license for some time, as he had a health issue. He then petitioned the Board to change his status from inactive to active, and the License Application and Malpractice Review Committee granted the request, but restricted him to administrative medicine. At this time, Dr. Markman was requesting that the restriction be removed following completion of a program to ensure he is clinically sound, as he has been out of practice for some time. Dr. Markman has proposed a potential bridge to meet this goal.

Dr. Markman explained that the bridge he had come up with contained three parts, which he had discussed previously with Ms. Daniels. The first would be to change his scope of practice from plastic surgery to bariatric and nutritional medicine, and in order to satisfy the requirements to do so, he had taken a minimum of 50 CME hours in the bariatric and nutritional medicine field, which he has submitted to the Board for review. The second part was to explain his position to the Board and participate in a preceptorship situation with a Board-Certified physician who has a significant practice in bariatric medicine, and Dr. Shang has agreed to be that preceptor for a minimum of 100 hours. The third would be to take the certification exam in bariatric medicine, once he has completed the preceptorship.

Discussion ensued concerning Dr. Markman's proposed plan to return to the practice of clinical medicine.

Dr. Held asked Dr. Shang how many patients he sees a day, and Dr. Shang estimated the number at 30 patients a day.

Further discussion ensued concerning Dr. Markman's proposed plan to return to practice.

Dr. Held moved that the Board change Dr. Markman's restricted license to an active license with the following conditions: that Dr. Markman be monitored by Dr. Shang for six months, with reports to the Board by Dr. Shang every two months, and the third report to be available to the Board by August 20, 2010, so it can be included in the Board packet for the September meeting. Dr. Shang is to review and report on 10% of the patients seen by Dr. Markman during the first month and 20% during the remaining months. Dr. Shang is to co-evaluate the first 10 new patients of Dr. Markman and to co-sign all of his charts. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 7

CONSIDERATION OF REQUEST OF HOWARD GELFAND, M.D., FOR REMOVAL OF RESTRICTION ON HIS MEDICAL LICENSE

- Howard Gelfand, M.D.

Ms. Daniels explained that Dr. Gelfand was currently restricted from performing surgery and from practicing OB/Gyn. Dr. Gelfand has had a disciplinary action in the state of New York, and at the time of his previous appearance before the Board, the Board placed restrictions upon him that mirrored those placed upon him in New York.

Dr. Gelfand stated that the restriction in New York was related to practicing Obstetrics, and had nothing to do with Gynecology; however, when he reactivated his license in Nevada after a period of inactivity, he agreed to the condition that he would not perform gynecological surgery. He still has no intention of performing gynecological surgery because he is no longer practicing in the area of OB/Gyn; he is now practicing wound care and hyperbaric medicine. He is petitioning for an unrestricted license so that he can sit for certification in wound care when it becomes available.

Dr. Held clarified that Dr. Gelfand's previous appearance before the Board was in September 2007, and at that time he was granted a license restricted to office gynecology and restricted from performing any type of surgery.

Dr. Gelfand explained that he is practicing at hospitals and nursing facilities. He does not have an office and his practice is overseen by other physicians.

Discussion ensued concerning the appropriateness of granting Dr. Gelfand's request.

Dr. Rodriguez moved that the Board grant Dr. Gelfand an unrestricted license. Mr. Heffner seconded the motion, and it passed, with Dr. Held voting against the motion and all other Board Members voting in favor of the motion.

Agenda Item 8

CONSIDERATION OF REQUEST OF HAROLD TATE, M.D., FOR MODIFICATION OF SETTLEMENT, WAIVER AND CONSENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. HAROLD TATE, M.D.*, BME CASE NO. 08-19247-1

- Harold Tate, M.D.; Mark S. Ravis, Esq.

Dr. Tate was present with his attorney, Mark S. Ravis, Esq.

Dr. Held named the adjudicating members who would be considering the matter.

Ms. West stated she did not receive the materials related to the matter, and therefore would not be participating in consideration of the matter.

Mr. Ravis recited a history of the case, which arose from a criminal conviction in the state of California related to Dr. Tate's failure to file state income tax returns. He told the Board that Dr. Tate had complied with all terms of the probation imposed upon him by the court in the criminal matter and in October 2009, he filed a motion to withdraw his guilty plea. The court granted the motion and changed his plea to not guilty, reduced the conviction to a misdemeanor and subsequently expunged the case, which now entitles him to say, under California law, that he has never been convicted of a crime, with the exception of when he is dealing with a state licensing board. He went before the Texas Medical Board last November and they agreed to terminate all discipline based upon the action taken in the criminal court in California, so he now has an unrestricted license in Texas. The Nevada order states that he must complete the terms of probation instituted by the California Medical Board in order to complete the terms of probation in Nevada. The problem is the way the California Medical Board order reads, his probation in California will not commence unless he goes back there to work, but he has no intention of returning to California to work, so he will never be able to complete the terms of probation there.

Mr. Marcher asked Mr. Ravis whether he was licensed to practice law in Nevada or affiliated with any firm in Nevada, and Mr. Ravis stated he was not, and that he understood his role at this meeting was simply to explain what was going on with Dr. Tate in California.

Mr. Cousineau clarified that he had spoken with Mr. Ravis prior to the meeting and had indicated to him that if he planned to advocate for Dr. Tate in Nevada, he would want to go *pro hac vice* or somehow affiliate with a Nevada attorney before doing so, and Dr. Ravis had indicated that he would be assisting Dr. Tate in his presentation in front of the Board but not advocating on his behalf.

Mr. Marcher cautioned Dr. Ravis that he may be practicing law in Nevada without a license and therefore the remainder of the presentation and any Board action should be based upon what Dr. Tate had to say.

Dr. Tate explained why he decided to plead guilty to the criminal charges in California and stated that the criminal case had been dismissed and that he was up-to-date with his CMEs. He had never been disciplined by a licensing Board other than related to that incident.

Dr. Rodriguez moved that the Board lift the probation on Dr. Tate's license. Mr. Heffner seconded the motion, and it passed, with Ms. West abstaining from the vote and all other adjudicating Board Members voting in favor of the motion.

Agenda Item 9

ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NAVNEET SHARDA, M.D.*, BME CASE NO. 08-11856-1

- Keith D. Marcher, J.D., Senior Deputy Attorney General

OPEN SESSION

Dr. Sharda was present with his attorney, Jacob L. Hafter, Esq.

Dr. Anwar stated he had been involved in a case before an insurance company that concerned Dr. Sharda, and asked whether he needed to recuse himself from adjudicating this matter.

Mr. Marcher asked whether Dr. Sharda had any objection to Dr. Anwar participating in the matter, and Mr. Hafter stated he and Dr. Sharda did not.

Mr. Marcher named the adjudicating Board Members who would be considering the matter, and asked whether there were any members who had not reviewed the information provided relative to the adjudication. No members responded in the affirmative. He then stated that Counts VI and VIII of the original complaint had been dismissed, so there were seven remaining counts to be adjudicated.

Dr. Held stated that Count I of the complaint alleged that Dr. Sharda failed to use reasonable care, skill and knowledge when he failed to appropriately investigate the patient's pacemaker prior to beginning radiation therapy.

Discussion ensued concerning Dr. Sharda's treatment of the patient in this respect.

Dr. Rodriguez moved that the Board find Dr. Sharda not guilty of Count I. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Held stated that Count II of the complaint alleged that Dr. Sharda failed to use reasonable care and skill by failing to speak with a medical oncologist prior to beginning radiation treatment.

Discussion ensued concerning Dr. Sharda's treatment of the patient in this respect.

Dr. Held moved that the Board find Dr. Sharda not guilty of Count II. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Held stated that Count III of the complaint alleged that Dr. Sharda failed to review or consider the bone scan or CT scan of the patient's abdomen before continuing with radiation therapy.

Discussion ensued concerning Dr. Sharda's treatment of the patient in this respect.

Dr. Fischer moved that the Board find Dr. Sharda not guilty of Count III. Mr. Heffner seconded the motion, and it passed, with Dr. Held, Ms. West, Mr. Heffner, Dr. Fischer and Ms. Clark voting in favor of the motion and Dr. Rodriguez, Dr. Anwar and Dr. Berndt voting against the motion.

Dr. Held stated that Count IV of the complaint alleged that Dr. Sharda failed to use reasonable skill and care by failing to obtain a biopsy on the patient prior to beginning radiation treatment for suspected lung cancer and failing to follow up with other health care providers to determine whether a biopsy was possible.

Discussion ensued concerning Dr. Sharda's treatment of the patient in this respect.

Dr. Fischer moved that the Board find Dr. Sharda guilty of Count IV. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Held stated that Count V of the complaint alleged that Dr. Sharda failed to refer the patient for other consultations regarding other possible treatment modalities prior to beginning radiation treatment.

Discussion ensued concerning Dr. Sharda's treatment of the patient in this respect.

Dr. Rodriguez moved that the Board find Dr. Sharda not guilty of Count V. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Held stated that Count VII was almost a reproduction of Counts II and V of the complaint.

Mr. Heffner moved that the Board find Dr. Sharda not guilty of Count VII. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Held stated that Count IX of the complaint alleged that Dr. Sharda failed to maintain timely, legible and accurate medical records.

Discussion ensued concerning Dr. Sharda's treatment of the patient in this respect.

Dr. Rodriguez moved that the Board find Dr. Sharda guilty of Count IX. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Discussion ensued regarding what sanctions would be appropriate in the circumstances.

Dr. Rodriguez moved that Dr. Sharda receive a public reprimand and that he reimburse the Board's costs and expenses incurred in the prosecution of the case against him, payable within 60 days. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Ms. Castagnola stated the costs incurred by the Board in the investigation were \$19,902.16.

Discussion ensued concerning whether a continuing medical education course in medical record keeping would be appropriate.

Dr. Held suggested that the motion include that Dr. Sharda attend a 10-hour, Board-approved continuing medical education course in medical records, in addition to the CME requirement for licensure, within one year.

Dr. Rodriguez accepted the amendment to the motion. Dr. Fischer seconded the amendment to the motion.

A vote was taken on the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 10

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. COLLEEN LYONS, M.D.*,
BME CASE NO. 09-8102-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Dr. Held named the adjudicating Board Members who would be considering the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement. She stated the incident at issue in the case occurred in 2003. Subsequent to the incident, and before the Board opened the case, Dr. Lyons voluntarily took substantial amounts of continuing medical education and completed a pediatric intensive care certification program twice, all of which the Investigative Committee took into consideration when evaluating the settlement terms.

Dr. Anwar moved that the Board accept the settlement as presented. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 11

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KENT SKOGERSON, M.D.*,
BME CASE NO. 09-8167-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement. She explained that Dr. Skogerson has not held an active license since December 2006, and that fact was taken into consideration in developing the settlement terms.

Dr. Fischer moved that the Board accept the settlement as presented. Ms. West seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 12

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. TIMOTHY HAMILTON, M.D.*, BME CASE NO. 09-32628-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau explained this was an out-of-state action and then outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement as presented. Ms. West seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 13

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SEAN PHONG-QUOC SU, M.D.*, BME CASE NO. 09-11344-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Dr. Su's attorney, L. Kristopher Rath, Esq., was present on Dr. Su's behalf.

Mr. Cousineau outlined the facts of the case and explained it was the Investigative Committee's position that Dr. Su's conduct was fairly egregious. He said he believed the proposed settlement agreement acknowledged several of the shortcomings of Dr. Su's conduct, contained some strident sanctions and would be a fair resolution of the matter. He then described the terms of the proposed settlement agreement.

Mr. Rath stated the settlement was reached after extensive negotiation with the Investigative Committee and he wanted to emphasize that Dr. Su did fly up to Reno with his attorney to meet with members of the Board's staff and was very serious about resolving the matter. The penalties are quite high and show that Dr. Su has realized he needs to change his practice and is doing so. He asked that the Board approve the settlement.

Dr. Fischer moved that the Board accept the settlement as presented. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 14

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JAMES OKOH, M.D., BME CASE NO. 09-32277-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Ms. Beggs explained this was an out-of-state action and then outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 15

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JOHN THALGOTT, M.D., BME CASE NO. 08-9484-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Dr. Thalgott's attorney, George Kelesis, Esq., was present on Dr. Thalgott's behalf.

Mr. Cousineau outlined the facts of the case and said the settlement had been arrived at through protracted negotiations with Mr. Kelesis and the Investigative Committee. He described the terms of the proposed settlement agreement and said the parties believe it is equitable and appropriate based on the totality of the circumstances. He explained there were a lot of variables that went into the negotiations and the ultimate determination as to the appropriateness of the settlement agreement by the Investigative Committee. One of the issues alluded to in the settlement agreement regards Assembly Bill 10, which was adopted during the last legislative session. This legislation provides whistleblower protection to individuals who come before regulatory bodies, district attorneys, the U.S. Attorney General, etc., and offer assistance to those entities, and precludes either administrative or criminal prosecution of those individuals. There is some debate as to whether AB 10 would be retroactive and apply to Dr. Thalgott, but he does not doubt that Dr. Thalgott and his attorney would challenge the applicability of AB 10 should the Board decide to proceed with prosecution of the complaint as alleged. Additionally, Mr. Cousineau has spoken with the Assistant U.S. Attorney handling the federal case, who has indicated that Dr. Thalgott's testimony in 2008 ultimately made a significant difference and contributed to the recent pleas that were entered and accepted in the case, that Dr. Thalgott was never a target of their investigation and that he came forward very early in the investigation.

Mr. Kelesis stated that he spoke with a physician in the state who said he would not have come forward and become involved in the case as Dr. Thalgott did, and that is one of the biggest difficulties law enforcement faces in these cases – no one is willing to talk. However,

Dr. Thalgott came forward, not because he was a target, but because he knew of certain things that were occurring in the community. Mr. Kelesis requested that the Board accept the settlement and stated that by doing so, the Board would be sending a message that it is time for physicians to come forward and say what they see to protect the public. Otherwise, they will be sending a message that if you break the rules, and the rules are to keep your mouth closed, you will be punished.

Discussion ensued concerning the appropriateness of the proposed settlement.

Dr. Berndt moved that the Board accept the settlement as presented. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 16

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MUZAFFAR KIRMANI, M.D.*, BME CASE NO. 09-10129-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau described the facts of the case and the terms of the proposed settlement agreement.

Dr. Anwar moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KENNETH WESTFIELD, M.D.*, BME CASE NO. 09-5797-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Ms. Beggs described the facts of the case and the terms of the proposed settlement agreement.

Mr. Heffner moved that the Board accept the settlement as presented. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 18

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. TIMOTHY BELL, M.D., BME CASE NO. 09-12922-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau explained this was an out-of-state action and then outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 19

DISCUSSION AND APPROVAL OF MEMORANDUMS OF UNDERSTANDING (MOUS) WITH DIVERSION PROGRAM PROVIDERS

- Douglas C. Cooper, CMBI, Interim Executive Director

Mr. Cooper explained there were three Memorandums of Understanding before the Board at this meeting with three separate providers, for assessment, evaluation and monitoring. The first is with Case Management Services, with facilities in the north and south; the second is with LifePath Recovery, with services currently only in the north; and the third is the PRN program at Monte Vista Hospital, with primary services in the south and associated services in the north. Mr. Cooper asked that the Board approve this particular format for Memorandums of Understanding, as well as these three specific Memorandums of Understanding. Each contains a cost sheet outlining what the programs will charge the participants, as part of the impetus for having a variety of programs was to accommodate a variety of income levels. Mr. Cooper is working with Dr. Mansky to enter into a fourth Memorandum of Understanding with his program.

Discussion ensued regarding confidentiality of information of those who participate in these programs.

Weldon Havins, M.D., J.D., stated he was concerned about the Board's use of Memorandums of Understanding, as the Administrative Procedures Act requires contracts to be submitted to the Board of Examiners for approval.

Mr. Marcher explained that Boards are only required to submit contracts to the Board of Examiners if they are over a certain dollar amount, and these Memorandums of Understanding contain no cost involved to the Board.

Mr. Cooper added that the Board had originally submit an RFQ to comply with contract requirements, and received only one response, which was not accepted by the Board, and the Board was assured by the Department of Administration it would not be violating any law by using Memorandums of Understanding.

Dr. Berndt moved that the Board approve the form and the three specific Memorandums of Understanding. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 20

REPORT ON MARCH 1, 2010 THROUGH FEBRUARY 29, 2012 BIENNIAL LICENSURE
REGISTRATION RENEWALS FOR PRACTITIONERS OF RESPIRATORY CARE

- Lynnette L. Daniels, Chief of Licensing

Ms. Daniels reported that 1,168 practitioners of respiratory care renewed their licenses and 154 were suspended for non-payment of renewal fees.

Agenda Item 21

CONSIDERATION OF UTILIZING FSMB UNIFORM ONLINE APPLICATION FORM

- Lynnette L. Daniels, Chief of Licensing

Ms. Daniels stated that she and Carolyn Castleman went to the Federation of State Medical Boards offices to look into using the Federation's online application form. The Board has been using the FCVS service for quite a while. If an applicant is using the Federation's credentials service, the information auto-populates the application and there are addendums to the application that are specific to each state, which are created by each state. The Board would continue to use our own application forms as well, so the applicants would have the choice to use whichever one they want. The service is free. She and Ms. Castleman would encourage the Board to approve utilization of the application.

Mr. Heffner moved that the Board approve utilization of the uniform online application form. Dr. Rodriguez seconded the motion, and it passed unanimously.

Agenda Item 22

CONSIDERATION OF GUIDELINES FOR LICENSURE APPLICANTS WHO HAVE
BEEN OUT OF PRACTICE FOR A PERIOD OF TIME

- Charles N. Held, M.D., President; Douglas C. Cooper, CMBI, Interim Executive Director;
Lynnette L. Daniels, Chief of Licensing

Mr. Cooper stated that staff had surveyed what other states are doing and the bottom line is they are using different methods and different breakdowns in the number of years, but they are all using the same type of criteria. Staff has created proposed guidelines for applicants who have been out of practice for one to three years, for those who have been out of practice for three to six years and for those who have been out of practice for over six years.

Discussion ensued regarding the number of years being used for each category, the requirements for each category, and the need for flexibility to consider each applicant on a case-by-case basis. Dr. Anwar suggested that the Board collaborate with the Osteopathic Medicine Board with respect to guidelines for this matter and others.

Dr. Berndt moved that the Board accept the proposed guidelines to be used as guidelines only. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 23

REPORTS

- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C, Advisory Committee Member
- Practitioner of Respiratory Care Advisory Committee - John H. Steinmetz, R.R.T., Advisory Committee Member
- Investigative Committees - Charles N. Held, M.D., President, Chairman, Investigative Committee A (No Report)
Benjamin J. Rodriguez, M.D., Vice President, Chairman, Investigative Committee B
 - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division - Pamela J. Castagnola, CMBI, Acting Chief of Investigations; Johnna S. LaRue, Compliance Officer
 - Status of Investigative Caseload
 - Status of In-Office Surgery Reporting for 2009
 - Compliance Report
- Nevada State Medical Association Report - Lawrence P. Matheis, Executive Director, Nevada State Medical Association
- Clark County Medical Society Report - Warren Evins, M.D., Ph.D., FACP, Executive Director, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board Vice President;

Physician Assistant Advisory Committee

John B. Lanzillotta, P.A.-C, stated the Committee was recently contacted by the Board concerning the language in NAC 630.496, which specifies the limit in the number of physician assistants or advanced practitioners of nursing that a physician can supervisor or collaborate with. There is confusion with respect to the word "simultaneously" contained in that regulation. Currently, it states that a physician shall not simultaneously supervise more than three physician assistants or nurse practitioners, or a combination of the two. This could be interpreted in several ways. The Board's concern is how this may relate to large group practices and the potential for violation of the regulation, not only involving supervision, but also chart review. More clarity is needed as to the direct link to the supervising physician. A telephone conference was held between the Advisory Committee and Board staff, and the meeting concluded with Board staff stating they would draft new language regarding these matters and the Physician Assistant Advisory Committee would have an opportunity to review it prior to it being presented to the Board for approval.

Practitioner of Respiratory Care Advisory Committee

No report was provided by the Advisory Committee.

Investigative Committees - Charles N. Held, M.D., President, Chairman,
Investigative Committee A (No Report)
Benjamin J. Rodriguez, M.D., Vice President, Chairman,
Investigative Committee B

- Consideration of Cases Recommended for Closure by the Committees

Dr. Rodriguez reported that on January 12, 2010, Investigative Committee B met and considered 52 cases, authorized the filing of a formal complaint in 1 case, requested an appearance in 3 cases, issued 10 letters of concern, referred 1 case back to investigative staff for further investigation or follow-up, and recommended closure of a total 47 cases. On February 16, 2010, Investigative Committee B met and considered 111 cases, authorized the filing of a formal complaint in 1 case, requested an appearance in 2 cases, issued 31 letters of concern, sent 3 cases out for peer review, and recommended closure of a total of 74 cases.

Dr. Fischer moved to approve for closure the cases recommended by Investigative Committee B. Dr. Anwar seconded the motion, and it passed unanimously.

Investigations Division

- Status of Investigative Caseload

Ms. Castagnola reported that there were currently 602 open investigative cases, which is approximately 86 cases per investigator. There were 16 unassigned peer reviews and 25 peer reviews outstanding.

- Status of In-Office Surgery Reporting for 2009

Mr. Cooper reported that the forms were sent to 4,619 physicians - all those with Nevada addresses and those in cities bordering Nevada. Approximately 450 did not respond. With the passage of Assembly Bill 123 at the last legislative session the Board is now required to submit to the Health Division a copy of the reports submitted by the physicians, so all reports must be copied and sent to them. He suggested that part of the Board's legislative initiatives for the 2011 session be that the Health Division be given the task of sending out and collecting the forms since they are the agency who is using the information.

- Compliance Report

Ms. LaRue that since the last report in November, 11 investigative compliance cases and 5 licensing compliance cases had been closed. There were 61 open investigative compliance cases and 31 open licensing compliance cases. To date for 2010, five formal complaints had been filed, 45 letters of concern had been issued, and \$23,000 in costs and \$600 in fines had been collected. There are currently no outstanding fines. The current outstanding balance owed to the Board is \$207,000, which does not include the amounts assessed to date in 2010.

Nevada State Medical Association Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, reported on recent activities of the Nevada State Medical Association, including an update on the National Injection Safety Campaign. He stated that most of the activities identifying what will be proposed legislation during the next Legislative Session are coming through the Legislative Committee on Health Care. He was asked to comment on three issues at the last

meeting of the Committee. The first was the overall of delegation by licensed professionals to unlicensed employees during the next session, the second was the consolidation of administrative services for all the licensing boards, and the third was the J-1 Visa issue.

Discussion ensued regarding possible abandonment of patients by physicians due to Medicaid and Medicare payment cuts and regarding the reforms the Board had made with respect to reduction in the time required to license new physicians.

Clark County Medical Society Report

Annette Teijeiro, M.D., President of the Clark County Medical Society, advised the Board that Dr. Evins was no longer the Executive Director of the Board, and that the position remained vacant at that time. She then reported on recent activities of the Clark County Medical Society.

Agenda Item 24

EXECUTIVE STAFF/STAFF REPORTS

- Discussion Concerning Amending Lease With Regional Transportation Commission for Reno Office
- Update and Discussion Regarding Opening Satellite Office in Las Vegas
- Consideration of Request for Staff and Board Member Attendance at Educational Meetings
- Informational Items
 - Update Regarding Proposed Amendment to Nevada Administrative Code Chapter 630, Related to Regulation of Delegation by Physicians and Physician Assistants to Medical Assistants (Update only – not an action item)
 - Discussion Regarding Board Audits
 - Update Regarding the Administrators in Medicine Assessment Program Audit/FSMB
 - Safe Injection Practices Project
 - Attorney General's Practicing Medicine Without a License Task Force
 - Prescription Drug Abuse Project
 - Legislative Committee on Health Care
 - Douglas C. Cooper, CMBI, Interim Executive Director; Lyn E. Beggs, J.D., General Counsel; Shawna M. Rice, Investigator

Discussion Concerning Amending Lease With Regional Transportation Commission

Mr. Cooper advised the Board that in a letter from the Governor's Office dated February 11, 2010, a copy of which had been provided to the Board for review, there was a requirement that all Boards and Commissions renegotiate their real property leases, seeking a 15% reduction. He had already accomplished this in December, through an oral agreement, which was then memorialized in writing and became effective in January. As a result, the Board has already saved \$10,287 to date, will save \$43,103 from April 1, 2010 to April 1, 2011, and save \$37,194 from April 1, 2011 through December 31, 2011, for a total savings of \$90,000-plus over a 23-month period of time. That savings will allow the Board to accomplish some other things that it needs to accomplish.

Update and Discussion Regarding Opening Satellite Office in Las Vegas

Mr. Cooper stated the rent for the office space in Las Vegas would be \$2,778 per month. He then highlighted the costs associated with the office. The savings the Board will realize due to the reduction in the lease cost for the Reno office will offset the costs of the Las Vegas office, and the office will basically be budget neutral. Initially, one investigator and one administrative assistant will staff the office and there will be no additional costs incurred in staffing, as the Board has one investigator and one administrative assistant who are willing to relocate to Las Vegas. The moving expenses for those employees will be offset by the reduction in travel costs for investigative-related functions. Additional benefits of having an office co-located in the same building as the Dental Board are that the Medical Board will share the conference room and videoconferencing which are already in place at the Dental Board office and the Medical Board will be able to conduct applicant fingerprinting there, as the Dental Board is already doing so and has agreed to allow the Board to use their facilities.

Discussion ensued concerning the benefits of having an office in Las Vegas and regarding meetings in Las Vegas and bifurcated meetings.

Dr. Berndt moved that the Board authorize Mr. Cooper to move forward with establishing an office in Las Vegas. Dr. Fischer seconded the motion, and it passed unanimously.

Consideration of Request for Staff and Board Member Attendance at Educational Meetings

Mr. Cooper again referred to the February 11 letter from the Governor. It states that all departments are to eliminate travel not related to the core mission of performing the job or health or life or safety of the employee or the public. Although it refers to "departments," the Executive Directors of the various Boards want to go along to show their support for the austerity moves of the Governor. He then outlined the requests for attendance at educational meetings and stated the only travel costs the Board would incur would be for two Board Members and one staff member to attend the Federation of State Medical Boards meeting. He said he believes that attendance at the Federation meeting is core-essential training for those Board Members and staff due to the topics discussed there.

Dr. Rodriguez moved that the Board approve the requests for training. Mr. Heffner seconded the motion, and it passed unanimously.

Update Regarding Proposed Amendment to Nevada Administrative Code Chapter 630, Related to Regulation of Delegation by Physicians and Physician Assistants to Medical Assistants

Mr. Cooper told the Board that workshops were held in November during which input was received from interested parties. A public hearing will be held on March 16th, at the Contractors Board in Las Vegas and videoconferenced to the Contractors Board in Reno, in order to receive additional input. The Board had not received any objection from the Legislative Counsel Bureau to the regulation in its present form, which was the same as that which was presented at the workshops and that will be presented again at the public hearing. Any

additional input received at the public hearing will be compiled and presented to the Board for consideration along with the proposed regulation at either its regularly-scheduled meeting in June or at a special meeting.

Mr. Cousineau added that a transcript of the public hearing, together with any correspondence or other materials received related to the regulation, will be provided to the Board for consideration at the Board meeting and if the Board makes any significant changes to the regulation at that time, it will need to be resubmitted to the Legislative Counsel Bureau for its review. The regulation in its final form will then be forwarded to the Legislative Commission for review. If approved, the Board will file the regulation with the Secretary of State and it will become law.

Discussion Regarding Board Audits

Mr. Cooper explained that the Board is scheduled for an audit for the period of July 1 through December 31, 2009. This short fiscal period was due to the change in the Board's fiscal year at the last legislative session. Requests for proposals were sent out to various accounting firms and the Board received several responses. Staff chose the firm of Kohn Colodny mostly due to recommendations from other boards and commissions and the fact that they audit the state of Nevada Accountancy Board. There will be a substantial savings to the Board in audit costs as a result of this change.

Update Regarding the Administrators in Medicine Program Audit/FSMB

Mr. Cooper advised the Board the AIM assessment panel will consist of three Executive Directors from other medical boards in states similar to Nevada in terms of licensee population size, a public member of our Board and a representative from an outside health-care type agency. They estimate the cost will be under the \$20,000 originally budgeted for the assessment and they will conduct the assessment in July. He then outlined the areas the panel will be reviewing and stated the results of the assessment will be provided to the Board at the September Board meeting.

Dr. Fischer moved that the Board authorize Mr. Cooper to contract with AIM for the assessment. Dr. Rodriguez seconded the motion, and it passed unanimously.

Safe Injection Practices Project

Ms. Rice explained that in late 2009, Mr. Cooper was contacted by a senior research analyst at UNLV regarding the Board's participation in the "One and Only" Campaign, which is a campaign aimed towards health care providers and patients to educate them with respect to safe injection practices. Mr. Cooper had been involved since December and she joined the program in January. It is funded by the Federal Government through grants, will be a nine-month program, involves multiple agencies and is led by the Nevada State Health Division, Centers for Disease Control and Prevention and the Safe Injection Practices Coalition. Nevada and New York are the two pilot sites chosen for the program, and were chosen because they have both

recently experienced major issues with infection control. Educational materials are being developed and focus groups will be held in order to better define the educational materials.

Dr. Rodriguez suggested the program create a certification program for health care providers, and Ms. Rice stated she would make the suggestion to the project coordinators.

Attorney General's Practicing Medicine Without a License Task Force

Ms. Beggs explained that this task force was created by the Attorney General's Office, based primarily on the Botanica Maya case that occurred in Las Vegas, and was originally established to focus upon the unlicensed practice of surgery. The first meeting was held on February 16, and at that meeting representatives from the different regulatory boards that attended, which included Pharmacy, Osteopathy and Nursing, clarified it was not solely the unlicensed practice of surgery they were concerned with, but the unlicensed practice of medicine in general. Currently the Task Force includes representatives from all sorts of regulatory agencies, boards, commissions, etc. Representatives of the law enforcement agencies who attended were to return to their offices and discuss whether law enforcement and the criminal divisions of agencies such as district attorneys' offices and the Attorney General's office will be willing to prosecute those cases. The ultimate goal is to have a plan in place that all regulatory bodies and agencies can follow to communicate with one another when these types of cases occur.

Mr. Cooper described the facts of the Botanica Maya case to the Board.

Prescription Drug Abuse Project Legislative Committee on Health Care

Mr. Cooper stated that Assembly Bill 326, which was passed at the last Nevada legislative session, requested the Board of Medical Examiners, the Board of Pharmacy and another agency come up with a bill draft to address prescription drug abuse diversion problems in Nevada. The agencies are working together to do so and will present their report to the Legislative Committee on Health Care, but the biggest problem the Medical Board has is that it does not deal with diversion of drugs to the streets. The only involvement the Board has in this issue is that some of the drugs doctors prescribe end up diverted to the streets. There was talk of making it more difficult for physicians to write prescriptions for controlled substances, which would cause undue regulation in the doctor's office, would cost the physicians money, and would tie up the task force, so Mr. Cooper made a cogent argument that perhaps the project was not looking at the problem correctly and suggested educational campaigns would be the way to address the problem in Nevada. Once the bill draft has been written, he will provide a draft to the Board so it will know what the project is thinking of sending forward to address this problem in Nevada.

Mr. Cooper explained that the Legislative Committee on Health Care is addressing the J-1 Visa problem and the idea of commonality of the administrative services of all the licensing boards. These things address boards and how they operate. Other items the Committee is looking into are the collaboration of licensing boards in the investigation and oversight of providers of health care, what constitutes a medical assistant, and licensure of medical doctors in the state of Nevada.

Discussion ensued regarding the movement to consolidate the administrative functions of the various licensing boards and the idea of reaching a consensus within the Board and with other Boards and placing articles in the various boards' newsletters asserting this consensus opinion.

Agenda Item 25

LEGAL REPORTS - Edward O. Cousineau, J.D., General Counsel; Lyn E. Beggs, J.D., General Counsel; Keith D. Marcher, J.D., Senior Deputy Attorney General

- Board Litigation Status

- Board Litigation Status

Ms. Beggs reported that at this meeting, the Board had considered 1 adjudication, 1 request for modification of a settlement agreement and 9 proposed settlements. Forty-five letters of concern were approved since the November Board meeting, 20 formal complaints had been filed since that meeting, 101 cases were currently pending in the Legal Department, 11 pending filing of formal complaints, 60 were scheduled for hearing through September 2010, 29 cases were in the queue for CMT review, and there was 1 District Court case still pending. Additionally, the petition regarding NAC 630.040 was pending in the Eighth Judicial District Court.

Agenda Item 26

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the November 6 & 7, 2009 Board Meeting

Dr. Fischer moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the November 6 & 7, 2009 Board Meeting. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 27

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

27(a) Harold Stensby, M.D.

Dr. Held asked Dr. Stensby whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez questioned Dr. Stensby regarding his current practice, what he planned to do if granted a Nevada medical license, and his affirmative response to Question 12 on his application for licensure.

Dr. Stensby described his current practice and what type of practice he would like to have in Nevada, and explained the circumstances surrounding the two most recent malpractice cases against him.

Dr. Rodriguez moved to grant Dr. Stensby's application for licensure. Mr. Heffner seconded the motion, and it passed unanimously.

27(b) David Maydole, C.R.T.

Dr. Held asked Mr. Maydole whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Fischer moved to go to Closed Session. Dr. Rodriguez seconded the motion, and it passed.

Upon returning to Open Session, Mr. Heffner moved to grant Mr. Maydole's application for licensure. Dr. Rodriguez seconded the motion.

Dr. Held suggested that Mr. Maydole be required to remain in compliance with the terms of his probation in California as a condition of licensure.

Mr. Heffner and Dr. Rodriguez accepted the amendment to the motion. A vote was taken on the amended motion, and it passed unanimously.

Dr. Held stated that the condition will lift automatically at the time Mr. Maydole completes the terms of his probation in California, and he will not be required to return before the Board for that.

27(c) Manish Jain, M.D.

Dr. Held asked Dr. Jain whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Berndt questioned Dr. Jain regarding what he had been doing since he finished his residency in September 2009 and what he planned to do if granted a medical license in Nevada.

Dr. Jain stated that he had been moonlighting as an emergency physician in Louisiana, working for two staffing companies. He had also been taking CME courses, concentrating on medical ethics. If granted a medical license in Nevada, he planned to practice neurosurgery.

Dr. Berndt questioned Dr. Jain as to why he responded negatively to Question 12 on his application for licensure, when he should have responded in the affirmative.

Dr. Jain stated his reading of the question was erroneous. He thought he focused on the latter part of the question, which asked whether any claims had been paid on his behalf, and not on the first part that asked whether he had ever been named as a defendant in any claim whatsoever. That is one reason why he had since been taking courses in ethics that focused on integrity of communication and language.

Dr. Berndt questioned Dr. Jain as to why he responded negatively to Question 19 on his application for licensure, when he should have responded in the affirmative.

Dr. Jain explained that the indication for the probationary period was suboptimal board scores in the period immediately following Hurricane Katrina and had nothing to do with personal or professional matters. He subsequently passed the boards successfully and the probationary period was verbally rescinded. This, again, is why he had been taking CME courses in various areas, including ethics.

Dr. Berndt questioned Dr. Jain concerning his affirmative response to Question 13 on his application for licensure.

Dr. Jain explained the circumstances surrounding his arrest for driving under the influence in 2001.

Discussion ensued concerning Dr. Jain's responses to the questions on his licensure application and the questions posed to him by the Board Members.

Dr. Rodriguez moved to grant Dr. Jain's application for licensure. Dr. Fischer seconded the motion, and it passed, with Dr. Anwar abstaining from the vote due to a relationship with Dr. Jain's family, Ms. West voting against the motion, and the remaining Board Members voting in favor of the motion.

27(d) Stephen Dubin, M.D.

Dr. Dubin was present with his attorney, L. Kristopher Rath, Esq.

Dr. Held asked Dr. Dubin whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Ms. West moved to go to Closed Session. Dr. Rodriguez seconded the motion, and it passed.

Upon returning to Open Session, Dr. Held moved to table consideration of Dr. Dubin's application until he has completed an evaluation by the PACE program, and returns to the Board for a determination as to an appropriate preceptorship. Dr. Fischer seconded the motion, and it passed unanimously.

27(e) Rachel Braunstein, M.D.

Dr. Held asked Dr. Braunstein whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Held moved to go to Closed Session. Ms. West seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anwar moved to grant Dr. Braunstein's application for licensure. Mr. Heffner seconded the motion, and it passed unanimously.

27(f) Su-Yong Pak, M.D.

Dr. Held asked Dr. Pak whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Fischer asked Dr. Pak whether he was ECFMG certified, and Dr. Pak stated that he was.

Dr. Fischer questioned Dr. Pak concerning his affirmative response to Question 12 on his application for licensure.

Dr. Pak described the circumstances surrounding the claims of malpractice against him.

Dr. Fischer moved to grant Dr. Pak's application for licensure. Dr. Berndt seconded the motion, and it passed unanimously.

27(g) Robert Aquino, M.D.

Dr. Held asked Dr. Aquino whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Held questioned Dr. Aquino concerning the fact he had not passed a major examination within the last ten years and is not board certified.

Dr. Aquino stated he has been practicing administrative medicine for the last 15 or 20 years and wants a license to practice administrative medicine in Nevada. He plans to set up multi-specialty clinics here.

Discussion ensued regarding whether it would be appropriate to grant Dr. Aquino an administrative license by endorsement.

Dr. Fischer moved to grant Dr. Aquino's application for an administrative license by endorsement. Dr. Rodriguez seconded the motion.

Further discussion ensued regarding whether Dr. Aquino met the statutory requirements to receive an administrative license by endorsement.

A vote was taken on the motion, and it passed unanimously.

27(h) James Harris, M.D.

Dr. Held asked Dr. Harris whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Berndt questioned Dr. Harris concerning his affirmative response to Question 12 on his application for licensure.

Dr. Harris described the circumstances surrounding the single claim of malpractice against him.

Dr. Berndt moved to grant Dr. Harris' application for licensure. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 28

MATTERS FOR FUTURE AGENDA

Dr. Held requested that the following items be included on the agenda for a future Board meeting: (1) consideration of appointment of Mr. Cooper as Executive Director; and (2) attendance at Board meetings and functions.

Dr. Fischer requested that a discussion regarding security at Board Meetings be discussed.

Mr. Cooper stated that the following items would be included on the agenda for the June 2010 Board meeting: (1) consideration and approval of 2009 Board Annual Report; (2) discussion of legislative initiatives for 2011 Legislature; (3) consideration and approval of revisions and additions to Board's *Policy and Procedure Manual*; and (4) the Board Audit by Kohn & Colodny.

Agenda Item 29

PUBLIC COMMENT

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

ADJOURNMENT

Dr. Fischer moved to adjourn the meeting. Dr. Berndt seconded the motion, and it passed. Dr. Held adjourned the meeting at 4:10 p.m.

* * * * *